

**IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION**

**IN RE NATIONAL PRESCRIPTION  
OPIATE LITIGATION**

**MDL No. 2804  
Case No. 17-md-2804  
Judge Dan Aaron Polster**

**This document relates to:**

*The County of Cuyahoga v. Purdue  
Pharma L.P., et al.*, Case No. 17-OP-45004

*The County of Summit, Ohio, et al. v.  
Purdue Pharma L.P. et al.*,  
Case No. 18-OP-45090

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**DEFENDANTS' MOTION TO EXCLUDE DAVID CUTLER'S OPINIONS AND  
PROPOSED TESTIMONY**

Defendants<sup>1</sup> hereby move for an order granting Defendants' motion to exclude David Cutler's opinions and testimony in their entirety under *Daubert* and Rule 702. As described more fully in the accompanying memorandum, Cutler's opinions should be excluded because they are

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<sup>1</sup> In this motion and the accompanying memorandum, "Defendants" include Purdue Pharma, L.P.; Purdue Pharma, Inc.; The Purdue Frederick Company, Inc.; Endo Health Solutions Inc.; Endo Pharmaceuticals, Inc.; Par Pharmaceutical, Inc.; Par Pharmaceutical Companies, Inc. f/k/a Par Pharmaceutical Holdings, Inc.; Janssen Pharmaceuticals, Inc.; Ortho-McNeil-Janssen Pharmaceuticals, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Janssen Pharmaceutica, Inc. n/k/a Janssen Pharmaceuticals, Inc.; Johnson & Johnson; Teva Pharmaceutical Industries, Ltd.; Teva Pharmaceuticals USA, Inc.; Cephalon, Inc.; Allergan plc f/k/a Actavis plc; Allergan Finance, LLC f/k/a Actavis, Inc. f/k/a Watson Pharmaceuticals, Inc.; Allergan Sales, LLC; Allergan USA, Inc.; Watson Laboratories, Inc.; Warner Chilcott Company, LLC; Actavis Pharma, Inc. f/k/a Watson Pharma, Inc.; Actavis South Atlantic LLC; Actavis Elizabeth LLC; Actavis Mid Atlantic LLC; Actavis Totowa LLC; Actavis LLC; Actavis Kadian LLC; Actavis Laboratories UT, Inc., f/k/a Watson Laboratories, Inc. - Salt Lake City; Actavis Laboratories FL, Inc., f/k/a Watson Laboratories, Inc. - Florida; Mallinckrodt plc; Mallinckrodt LLC; SpecGx LLC; AmerisourceBergen Drug Corporation; Andia, Inc.; Cardinal Health, Inc.; CVS Indiana, LLC; CVS Rx Services, Inc.; Discount Drug Mart, Inc.; HBC Service Company; Henry Schein, Inc.; Henry Schein Medical Systems, Inc.; McKesson Corporation; Miami-Luken, Inc.; Prescription Supply, Inc.; H.D. Smith Holding Company; H.D. Smith Holdings, LLC; H.D. Smith, LLC d/b/a HD Smith f/k/a H.D. Smith Wholesale Drug Co.; Health Mart Systems, Inc.; Rite Aid of Maryland, Inc.; Rite Aid of Maryland, Inc. d/b/a Rite-Aid Mid-Atlantic Customer Support Center, Inc.; Walgreen Co.; Walgreen Eastern Co.; and Walmart Inc. f/k/a Wal-Mart Stores, Inc. ("Defendants").

On June 10, 2019, Insys Therapeutics, Inc. and its affiliates each filed a voluntary case under chapter 11 of United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware, which cases are being jointly administered under Case No. 19-11292 (KG). In light of this bankruptcy proceeding, Insys does not join any of the Daubert motions for summary judgment motions to be filed in the MDL Track One cases.

(i) conceptually flawed, irrelevant, and unhelpful to the trier of fact and (ii) not based on a reliable methodology. Accordingly, Cutler's opinions should be excluded in their entirety.

Dated: June 28, 2019

Respectfully Submitted,

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<sup>2</sup> Teva Pharmaceutical Industries Ltd., Allergan plc f/k/a Actavis plc, and Mallinckrodt plc are respectively an Israeli corporation, Irish holding company, and Irish company that are not subject to and contest personal jurisdiction for the reasons explained in their pending motions to dismiss for lack of personal jurisdiction; they are specially appearing to join this motion as a result of the Court's deadline to file dispositive and *Daubert* motions, and, thus, they do not waive and expressly preserve their pending personal jurisdiction challenges.

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CERTIFICATE OF SERVICE

I, Donna M. Welch, hereby certify that the foregoing document was served via the email consistent with the Court's order to all counsel of record.

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